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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 146

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

EDNA K. YATES.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, John Hancock Mutual Life Insurance Company, brings this petition for a writ of certiorari to review a decision of the Supreme Court of the State of Georgia, and respectfully shows:

I.

Summary Statement of the Matter Involved.

Petitioner contends that the Supreme Court of Georgia, in violation of the full faith and credit clause of the Constitution of the United States, has destroyed all of peti-

tioner's defenses to a suit on a policy of life insurance, vested in petitioner and recognized as valid by a statute of the State of New York, as construed by the Court of last resort in that State.

This cause was filed in the City Court of Carrollton, Georgia, by respondent as the beneficiary named in a policy of life insurance in the amount of $2,000, issued by petitioner to respondent's husband, Harmon H. Yates. The policy involved is a New York contract having been applied for, issued and delivered and the first premium paid in the State of New York. The policy was applied for in writing by Harmon H. Yates on May 2, 1932. A true copy of the application was attached to the policy which was on May 12, 1932, delivered to the applicant, who at the time was a citizen and resident of New York. The insured died in New York City on June 23, 1932. Proofs of death were made by the beneficiary and liability was denied, except for the premium paid, return of which was tendered and refused, on the grounds of material misrepresentations made in the application upon which grounds the claim was contested when suit was later filed in the Georgia Court.

In the application for insurance the insured stated that he was then in good health, that he had never had or been treated for cancer or tumor, and indigestion, and that he had not within the past five years had medical advice for any disease or disorder. The proofs of death disclosed that the insured died of carcinoma (or sarcoma) of the intestine, and that he showed symptoms of that disease since March 1932; also, that on April 7, 1932, which was prior to the date of the application, the insured received medical advice from Dr. C. L. Davidson in Jamaica, N. Y., for a disease diagnosed as secondary anemia. In addition to the proofs of death the undisputed evidence disclosed that the insured was treated by Dr. Davidson in his office

in Jamaica, N. Y., upon four other occasions during April, 1932.

In the trial court petitioner pleaded and proved a New York Statute (Section 58 of the New York Insurance Laws) as follows:

> "POLICY TO CONTAIN THE ENTIRE CONTRACT; STATEMENTS OF INSURED TO BE REPRESENTATIONS AND NOT WARRANTIES.—Every policy of insurance issued or delivered within the state on or after the first day of January, nineteen hundred and seven, by any life insurance corporation doing business within the state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writings unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void."

Petitioner also set up in its pleadings and proved the decisions of the Court of Appeals of New York in

Minsker v. *John Hancock Mutual Life Insurance Company*, 254 N. Y. 333; 173 N. E. 4,

and

Travelers Insurance Company v. *Pomerantz*, 246 N. Y. 63, 158 N. E. 21.

Construing the foregoing statute, the Court of Appeals of New York in the *Minsker* case held in substance that the statute superseded the previous court made rule that if the medical examiner of a life insurance company was truthfully told by the applicant for a policy of facts which, under the terms of the policy, would make it void if not noted upon it, the company could not avail itself of the

defense that such facts were not stated in the policy; that since the enactment of Section 58 of the Insurance Law the policy must contain the entire contract, and if an application incorporated therein does not contain correct answers to the questions asked, it is the insured's duty to have it corrected, and in such circumstances a recovery will no longer be permitted because the medical examiner incorrectly recorded the applicant's answers, or because the insured was unable to read or neglected to read the policy.

In the trial court petitioner contended that the policy was void because the insured had falsely stated in the application that he had never had or been treated for cancer or tumor, and indigestion, and that he had not within the past five years had medical advice for any disease or disorder, and that by the law of New York as embodied in Section 58 of the Insurance Law as construed by the highest court of that State it was not permissible to show that the applicant had in fact given truthful answers to petitioner's agent contrary to the written answers contained in the application. The trial court overruled these contentions, and admitted in evidence over objection that the same was not admissible by the New York law, testimony of the beneficiary (respondent herein), that she was present when the application was signed and heard her husband tell the agent that he had not had any medical advice, but that he had suffered from indigestion. The jury were instructed that this evidence was admitted for the purpose of showing notice to the insurance company, and that such evidence might be considered in determining whether the insured made false statements that were material. The trial court further charged the jury generally upon the law of waiver as applied by the Georgia Courts to the effect that the knowledge of the agent is the knowledge of the insurer, and if a policy is issued with knowledge by the agent of a fact or condition which by the terms of the con-

tract would render it void, the insurer will be held to have waived the existence of such fact or condition.

Verdict and judgment having been rendered against petitioner, appeal was taken to the Court of Appeals of Georgia where it was again contended that the policy was void by reason of material false representations made by the applicant, and that under the New York statute as construed by the highest court of that State it was error to vary by parol the written answers given in the application, and to instruct the jury that they were authorized to infer that the right of the insurer to defeat recovery by reason of false representations pleaded had been waived.

The Court of Appeals of Georgia sustained the contention that material misrepresentation had been made, and found as a fact from the undisputed evidence that the insured had visited a physician at least four times during April, 1932, when he was suffering from indigestion, and that the application shows that the question as to whether he had received medical advice during the past five years was answered in the negative.

Recognizing the New York statute and decisions, the Court of Appeals of Georgia further found as a fact that under the New York law, when a life insurance policy is delivered to the insured he must read it (or have the same read to him) and the application forming a part thereof, and if the application does not contain correct answers to the questions asked by the agent of the insurer, the insured is under a duty to so inform the insurer and have the same corrected, and when he fails to do this a recovery will not be permitted, even though the insurer's agent was informed of the facts and incorrectly recorded the answers of the applicant, and that under the New York law a recovery could not be had by the beneficiary on this policy.

John Hancock Mutual Life Insurance Company v. *Yates,* 50 Ga. Apps. 713, 714, 179 S. E. 239.

Notwithstanding its holding that under the New York law, on account of material misrepresentation, no recovery could be had by the beneficiary in this case, the Georgia Court of Appeals held that the law of New York which forbade the showing of a parol waiver had no application in a suit on the policy in Georgia, as it affected merely the remedy, which is governed by the law of the forum.

The court held that the jury were authorized to find that the agent had actual knowledge of the facts prior to the issuance of the policy and the insurer was estopped from asserting that the policy was void because of such misrepresentations. The judgment of the trial court was accordingly affirmed.

Applying for the writ of certiorari to the Supreme Court of Georgia to review the decision of the Court of Appeals, petitioner asserted that the Court of Appeals of Georgia, in applying the law of parol waiver which is prohibited by Section 58 of the New York Insurance law as construed by the Court of Appeals of New York, had denied such faith and credit in the courts of this State as by law is given to that statute by the courts of New York in violation of Article 4, Section I of the Constitution of the United States.

Upon granting the certiorari the Supreme Court of Georgia by a three to two decision also found as a fact that by Section 58 of the New York Insurance Law as construed by the Court of Appeals of New York in the *Minsker* case, the plaintiff is bound by the answers as written, since the application was physically annexed to the policy of insurance received from the insurer. The Supreme Court of Georgia held that the matters involved affected merely the remedial processes applicable to a suit in Georgia which must be governed by the law of Georgia, which permitted parol waiver, and that the law of New York could have no extraterritorial effect. Upon these grounds petitioner's

claim that its rights under the full faith and credit clause of the Constitution had been denied were decided adversely to petitioner, and the decision of the Court of Appeals complained of was affirmed.

John Hancock Mutual Life Insurance Company v. Yates, 185 S. E. 268.

II.

Reasons Relied on for the Allowance of the Writ.

Petitioner predicates its petition for the writ of certiorari in this case upon Supreme Court Rule 38, paragraph 5 (a).

THE SUPREME COURT OF GEOGRIA HAS DECIDED A FEDERAL QUESTION OF SUBSTANCE NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

Petitioner submits that its right to have the New York statute as construed by the Court of Appeals of New York applied by the Georgia courts in the trial of this case is a substantive right and not one involving mere matter of procedure. The statute and the decisions construing it were parts of the insurance contract. Thus viewed, the parties had agreed that a claim upon the contract as written, and not as its terms might be varied by parol, could be resisted for material false representation. Under the statute petitioner had a vested right to an existing defense which the Georgia courts found to be a fact, but which they refused to recognize. But whether relating to the remedy or substance, the statute and its construction are express terms of the contract of the parties by which the right of the insured and the correlative obligation of the insurer are defined. If effect is given to the statute and its construction the respondent cannot recover. If on the other hand the statute is not applied to the contract, a contractual

right of the insurer is abrogated and liability imposed, although the parties have agreed otherwise.

As petitioner's right to its defense unobstructed by waiver springs entirely from the New York statute and its construction, it was the obligation of the Georgia courts under the Constitution of the United States to give to the statute of New York the same effect that it receives by law and usage at home, petitioner having brought to the attention of the Georgia courts by appropriate allegation and proof the faith and credit which the statute is required to be given in the State of New York, as decreed by the highest court of that State.

WHEREFORE petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Georgia, commanding that court to certify and send to this Court, on a day certain to be therein named, a transcript of the record and all proceedings in said case, which was numbered and entitled in that court, Number 10802, John Hancock Mutual Life Insurance Company, petitioner, *versus* Edna K. Yates, respondent, and that said judgment of said Supreme Court of Georgia may be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Petitioner,
By ALEX W. SMITH, JR.,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 146

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

EDNA K. YATES.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

I.

The decision sought to be reviewed was rendered on March 21, 1936, and is reported in 185 S. E. (Advance Sheets) 268. Within due time petitioner filed a motion for a rehearing which was denied on March 31, 1936.

II.

Jurisdiction.

1. Jurisdiction of this Court is invoked under Judicial Code, Section 237, as amended by the Act of February 13, 1925. (U. S. C. A. Title 28, Section 344.)

2. Petitioner believes this Court to have jurisdiction of this case because of the refusal of the Supreme Court of Georgia to give such faith and credit to a statute of the State of New York as said statute is given by law in the courts of New York, in violation of Article 4, Section I, of the United States Constitution.

3. Cases believed to sustain such jurisdiction are as follows:

Hancock National Bank v. *Farnum*, 176 U. S. 640;
Chicago & Alton R. R. v. *Wiggins Ferry Co.*, 119 U. S. 615, 622.

III.

Statement of the Case.

A full statement of the case is given under heading I in the foregoing petition and in the interest of brevity the statement is not repeated here.

IV.

Specification of Error.

The Supreme Court of Georgia erred in holding and deciding that it was not bound to give the same faith and credit to an applicable statute of the State of New York as such statute by law and usage receives in the courts of New York.

V.

Argument.

Petitioner submits that Section 58 of the New York Insurance Law and its construction by the Court of Appeals of New York form an integral part of the contract between the parties and therefore cannot properly be classified as

affecting merely the remedy, as held by the Supreme Court of Georgia.

Farmers Bank v. *Federal Reserve Bank*, 262 U. S. 649, 660;

Georgia Railway & Electric Company v. *Decatur*, 295 U. S. 165.

Waiver and estoppel are facts, not procedure. The manner of proof was not involved. Petitioner contended that no proof at all could be allowed, that tended to vary the terms of the contract. It is said in

Pritchard v. *Norton*, 106 U. S. 124, 136,

that the manner of proving the facts is matter of procedure, but the facts to be proved are not matters of procedure; they are matters with which the procedure has to deal.

Technical distinctions between substance and remedy cannot be resorted to if the effect is to impair Constitutional rights.

Bronson v. *Kinzie*, 1 Howard 312;

Home Insurance Company v. *Dick*, 281 U. S. 397, 406.

It is immaterial whether the application of the New York statute be classified as remedy or substance, its proper recognition prevents recovery by respondent, and ignoring it imposes liability although the parties have agreed otherwise.

Home Insurance Company v. *Dick*, 281 U. S. 397, 406.

Petitioner having brought to the attention of the Georgia courts by appropriate pleading and proof the faith and credit which the statute is required to be given by the courts of New York as decided by the highest court of New York, recognition of petitioner's rights under the full faith and credit clause of the United States Constitution

requires the courts of Georgia to give the statute the same effect as it was shown to receive in New York.

Chicago & Alton R. R. v. *Wiggins Ferry Company,* 119 U. S. 615, 622;

Gasquet v. *Lapeyre,* 242 U. S. 367, 371;

Hancock National Bank v. *Farnum,* 176 U. S. 640;

Smithsonian Institution v. *St. John,* 214 U. S. 19, 28;

Louisville & Nashville R. R. Co. v. *Melton,* 218 U. S. 36, 50;

Bradford Electric Light Co. Inc. v. *Clapper,* 286 U. S. 145.

We also especially call attention to the strong dissenting opinion in the case at bar of Justice Gilbert of the Supreme Court of Georgia with whom Justice Hutchinson concurred, in which our contentions herein urged are fully sustained.

Decisions of this Court holding to the effect that where the validity of a State law is not drawn in question but merely its construction no Federal question arises, we submit are clearly distinguishable from the facts here. In these decisions the claim under the full faith and credit clause of the Constitution failed because of the failure to allege and prove that the statute involved had by law or usage any other effect than was given it by the Court of the forum. The following are illustrative.

Glenn v. *Garth,* 147 U. S. 360, 369;

Lloyd v. *Matthews,* 155 U. S. 222.

Respectfully submitted,

ALEX W. SMITH, JR.,
Attorney for Petitioner.

(7897-C)